

Technical Operating Procedures
for
Determining Removal Costs
under
The Oil Pollution Act of 1990

U.S. COAST GUARD
NATIONAL POLLUTION FUNDS CENTER

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U.S. Department
of Transportation



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Subj: TECHNICAL OPERATING PROCEDURES (TOPs) FOR DETERMINING REMOVAL COSTS UNDER THE OIL POLLUTION ACT OF 1990 (OPA90)

1. PURPOSE. The enclosed Manual establishes procedures necessary to determine oil spill removal costs.
2. ACTION. Military and civilian employees of the NPFC shall follow these procedures to review and approve removal costs. Other government agencies and employees, and Coast Guard field units, are strongly encouraged to follow these procedures for timely and consistent removal cost reimbursement.
3. DIRECTIVES AFFECTED. This is the third of a series of NPFC Manuals which together establish uniform operating procedures for Oil Spill Liability Trust Fund access, documentation, reimbursement, and cost recovery. See NPFCINST 16451.1, Technical Operating Procedures for State Access under Section 1012 (d) (1) of OPA90; and NPFCINST 1645.2, Technical Operating Procedures for Resource and Cost documentation.
4. DISCUSSION. This Manual sets forth roles and activities involved in removal cost issues.

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Encl: (1) Technical Operating Procedures for Determining Removal Costs Under the Oil Pollution Act of 1990

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TECHNICAL OPERATING PROCEDURES FOR DETERMINING REMOVAL COSTS

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CHAPTER 1 — OIL SPILL LIABILITY TRUST FUND (OSLTF) COSTS OVERVIEW

- A. General: Responsible Parties (RPs) are liable for "all removal costs" incurred by the government that result from the RPs oil pollution incident. Although not necessary for RP liability, removal costs must be "consistent with the NCP" to be payable from the OSLTF. Federal On-Scene Coordinators (FOSCs) are responsible for exercising effective financial management and cost controls during the response, including verification of removal costs and certification of consistency with the NCP, as outlined in this TOPs.
- B. Basic Criteria for Removal Costs:
1. The prerequisites which must be met before a removal cost can be paid from the Fund are:
 - a. The removal costs must result from an Oil Pollution Act (OPA) incident: a discharge or substantial threat of discharge of oil, into or upon navigable waters (surface waters) of the United States or adjoining shorelines or the exclusive economic zone.
 - b. The action giving rise to the removal costs must be consistent with the National Contingency Plan.
 2. If the prerequisites are met, any action necessary to contain or remove oil from water or shorelines, or otherwise necessary to minimize or mitigate damage to the public health and welfare may be deemed removal and incur costs payable from the OSLTF. This includes ancillary support and administrative activities necessary for the response. It should be recognized, however, that all costs, and particularly any unusual costs, will usually be scrutinized closely by the responsible parties (RP) . If removal costs can be avoided by encouraging the RP to clean up their spills, that is always the preferred course of action. As with any Government funds, spending should be sensible, whether or not the costs may ultimately be recovered from the RP.
 3. Examples of removal costs included in this TOPs are presented with the assumption that the actions and resulting costs comply with the fundamental requirements set out above.
- C. Consistency with the National Consistency Plan (NCP).
1. The National Contingency Plan (40 CFR Part 300), Subpart D, OPERATIONAL RESPONSE PHASES FOR OIL REMOVAL, outlines the scope of activities which constitute a response to an oil incident to conduct removal. The four phases of response are as follows:
 - I. Discovery or Notification.
 - II. Preliminary Assessment and Initiation of Action.
 - III. Containment, countermeasures, cleanup, and disposal.
 - IV. Documentation and Cost Recovery.
 2. The concept of consistency encompasses carrying out the purposes of the NCP and substantially complying with the NCP process, specifically:

- a. The removal activity was deemed necessary for the cleanup or the prevention of an oil spill and not otherwise contrary to the NCP (e.g., the limitations on use of dispersants or in-situ burning).
 - b. The removal activity was authorized by a federally approved response plan, the FOSC or the RP, or was condoned by the FOSC or RP.
 - c. The removal activity was within the scope of the tasking, either in the federally approved response plan or given by the FOSC or RP. Absent clear tasking, it must be shown that the activity conducted was a customary removal action under the circumstances or there was good cause for the deviation from the norm. The FOSC may terminate authorized activities and may ratify unauthorized ones for good cause if they are otherwise consistent with the NCP.
3. Not all the response phase activities qualify for funding from the OSLTF as removal costs, e.g., Phase I, Discovery or Notification.

CHAPTER 2 — ROLES AND RESPONSIBILITIES IN DETERMINING REMOVAL

A. The Federal On-Scene Coordinator's (FOSC) Role.

1. Authority. The FOSC has been delegated the authority to ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge of oil into U.S. surface waters (including the Exclusive Economic Zone). The FOSC verifies whether a particular cost was incurred for removal and was consistent with the NCP. The FOSC should not incur costs which are unnecessary for the removal or inconsistent with the NCP. In other words, the FOSC removal activities should be as effective and economical as possible under the circumstances.
2. Establishing the purpose for which a removal cost was incurred. In making the determination regarding removal actions and resulting costs, the FOSC is guided by the criteria in Chapter 1 and should, therefore, be prepared to document the following:
 - a. Why a particular action was necessary to contain or remove oil pollution, or necessary to minimize or mitigate oil pollution damage to the public's health and welfare.
 - b. That the action falls within phases II-IV, Operational Phases of Response for Oil Removal.
3. Documenting removal costs. NCP Sections 300.315 and 5.7 of Appendix E to the NCP require the FOSC to collect and maintain documentation "to support full cost recovery". Such documentation should include both reimbursable and non-reimbursable Government costs allocable to the removal effort (non-reimbursable costs are those costs which cannot be reimbursed to the agency because it has already received appropriated funds for that purpose). Routine incidents are responded to in a routine manner, and the response activities are clearly outlined in FOSC POLREPs and reports. When the purpose of the cost is not clear, however, the FOSC may be required to provide further explanation of the determinations made regarding removal actions.

B. National Pollution Funds Center Role.

1. Authority. The NPFC has been solely delegated authority to pay removal costs. The NPFC was established as a separate Coast Guard Headquarters Unit to maintain a degree of independence from the operational environmental protection programs. Thus, the NPFC has a responsibility to establish and enforce appropriate limits on the use of the OSLTF, balanced against the operational requirements of the FOSC.
2. The Case Officer/Case Team. The Case Officer represents the NPFC for all incident specific matters with the exception of particular claims matters. The Case Officer and the Case Team support the operational requirements of the FOSC while also ensuring that the uses of the OSLTF are appropriate. They are tasked with verifying that the resource/cost documentation meets all the guidelines herein.

CHAPTER 3 — PHASE I DISCOVERY AND NOTIFICATION – ACTIVITIES AND REMOVAL COSTS

- A. Phase I Activities. These activities are conducted to discover oil spills or to notify appropriate authorities of oil spills, for example, patrols, notifications to the National Response Center, notifications to the predesignated FOSC. With the exception of the costs incurred by the FOSC to notify appropriate Federal, State, and local officials of an OPA incident, these costs are not directly chargeable to the OSLTF as removal costs but are funded through normal operating appropriations (e.g., Coast Guard OE).

CHAPTER 4 — PHASE II PRELIMINARY ASSESSMENT AND INITIATION OF ACTION – ACTIVITIES AND REMOVAL COSTS INCLUDING ASSESSMENT PHASE COSTS

- A. Phase II Activities. These activities are conducted to gather information about the reported incident and plan appropriate actions. These activities are necessary whether or not the RP is taking action. The costs incurred in this phase are eligible for funding from the OSLTF subject to thresholds for access to the Fund defined in subparagraph 4.D.2 below. Phase II also includes the "initiation of action" activities which would immediately follow the determination by the FOSC that further action is required.
- B. Assessment Phase. Phase II includes the "assessment phase" between notification of a discharge and the determination by the FOSC: i) that either nothing beyond initial assessment needs to be done; or ii) that further action or presence is required. The nature of pollution response sometimes results in an initial mobilization of more resources than are actually needed to respond to an incident. Because this mobilization of resources may potentially result in costs which appear to exceed those necessary to conduct the actual cleanup, the CG has elected not to charge the RP for assessment phase costs depending on such circumstances as whether the RP is responding responsibly to the incident. The discretion to bill an RP for some or all Federal removal costs incurred during the assessment phase rests with the NPFC, and FOSCs should not advise RPs about whether certain charges will or will not be billed.
- C. Use of OSLTF for Phase II Costs. The FOSC should obtain an FPN and corresponding ceiling (and begin documenting all Federal removal costs) when:
1. The FOSC expects to incur "out-of-pocket" costs to conduct the assessment phase or any part of the response; or
 2. The FOSC determines that a continued presence is required to ensure proper removal actions (the initiation of action part of Phase II) and no "out-of-pocket" costs are expected, but internal costs (costs of FOSC personnel and equipment) are expected to exceed \$500.
- D. Examples of Phase II – activities are as follows:
1. Assessment.
 - a. Evaluate magnitude/severity.
 - b. Assess feasibility of removal.
 2. Initiation of action.
 - a. Identify the RP. A generic list of documents to be acquired or incorporated into the statement of work to determine liability is provided in Appendix One of this TOPs.
 - b. Notify affected natural resource trustees and other affected agencies.
 - c. Plan further action.
 - d. Indicate RP to clean up.
 - e. Issue administrative orders.

E. Some Examples of Costs Eligible for Direct Charge to the OSLTF for Phase II Activities for Assessment though these Costs may be Recovered from the RP as discussed in subparagraph 4.B above:

1. Temporary Duty per diem, travel and transportation in accordance with Federal travel regulations.
2. Contractor costs, such as drilling test wells, performing hydrological surveys.
3. Consumables or services specifically purchased during the response, such as film purchased to document the incident.
4. Replacement, repair, renovation or cleaning of equipment (whichever is most cost effective) to the extent that the loss or damage is due to the specific response and not the result of improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.
5. Long distance telephone charges.
6. Costs of transporting and staging of required supplies and equipment.

F. Some Examples of Costs Eligible for Charge to the OSLTF for Phase II Activities for Initiation of Action and Subsequent Recovery from the RPs.

1. Local and Temporary Duty travel, transportation, and any per diem.
2. Contractor costs, such as contract cleanup expertise.
3. Consumables or services specifically purchased during the response, such as sorbent, supplies, incident-specific vehicle and equipment lease/rentals.
4. Replacement, repair, renovation or cleaning of equipment to the extent that the loss or damage is due to the specific response and not the result of improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.
5. Reservist orders.
6. Auxiliarist orders.
7. Government personnel assigned, such as scientific support, FOOSC personnel, strike team personnel, legal support for administrative orders, etc., at standard costs.
8. Government facility use, such as office space at standard cost.
9. Government vehicles, boats, aircraft use at standard costs.
10. Government systems use.
11. Costs of transporting and staging of required supplies and equipment.

CHAPTER 5 — PHASE III – CONTAINMENT, COUNTERMEASURES, CLEANUP, AND DISPOSAL – ACTIVITIES AND REMOVAL COSTS

- A. Phase III Activities. These activities are the traditional cleanup activities. If the RPs are taking proper action, the FOSC only conducts those activities necessary to ensure that immediate and effective removal takes place. Monitoring activities should be limited to those necessary to ensure proper removal and should not become so onerous as to discourage RPs from conducting their own cleanups. Again, the costs incurred in this phase are eligible for funding from the OSLTF subject to thresholds for access to the Fund specified in paragraph 4.C.
- B. Examples of Federal Phase III Removal Activities when the RP Performs Cleanup:
1. Analyze water samples to determine source.
 2. Analyze water samples to determine spread.
 3. Measure and sample.
 4. Monitor fate and effect of oil.
 5. Restrict access to area, control traffic.
 6. Review and direct actions by the RP.
- C. Examples of Costs Eligible for Charge to the OSLTF for Phase III Removal Activities when the RP Performs Cleanup:
1. Local and Temporary Duty travel, transportation, and any per diem.
 2. Contractor costs, such as security contractors, technical assist team contractors.
 3. Consumables or services specifically purchased during the response, such as supplies, sorbent, incident specific vehicle and equipment lease/rentals.
 4. Replacement, repair, renovation or cleaning of equipment - to the extent that the loss or damage is due to the specific response and not the result of improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.
 5. Long distance telephone charges.
 6. Reservist orders.
 7. Auxiliarist orders.
 8. Government personnel assigned, such as scientific support, FOSC personnel, strike team personnel, legal support for administrative orders, etc., at standard costs.
 9. Government or leased facility use, such as office space at standard cost, mobile command post lease.
 10. Government vehicles, boats, aircraft use at standard costs.
 11. Government systems use, such as telecommunications systems, computer systems.
 12. Government or contract laboratory sample analysis, such as Coast Guard Marine Safety Lab services at standard costs.
 13. Costs of transporting and staging of required supplies and equipment.
- D. Examples of Federal Removal Activities in Addition to those Listed in 5.B when the RP is not Known or Fails to Perform Immediate and Effective Removal:
1. Controlling the source of discharge.
 2. Controlling the spread of oil.
 3. Placement of physical barriers to deter the spread of the oil and to protect the natural resources and sensitive ecosystems.

4. Controlling of the water discharged from upstream impoundment.
5. Capturing, cleaning, and emergency care for oiled animals.
6. Cleaning oil from beaches, shoreline, piers, boats, private and public property.
7. Excavating contaminated soils.
8. Providing alternative drinking water.
9. Providing for temporary relocation or evacuation where necessary to protect public health.
10. Removing debris from shorelines prior to oiling to facilitate later cleanup.
11. Removing and, if necessary, destroying a vessel to limit discharge when properly authorized.
12. Using chemicals and other materials in accordance with subchapter J of the NCP to restrain the spread of oil and mitigate its effects.
13. Properly disposing of recovered oil and contaminated materials.

E. Examples of Costs Eligible for Charge to the OSLTF in Addition to those Listed in 5.C for Phase III removal Activities when the FOSC Determines it Necessary to Arrange for Removal, in Addition to, or instead of, a RP's Removal Efforts:

1. Purchase of equipment, such as boom, skimmers, transfer systems, pumping systems, dracones, vapor analyzers, gas indicators, protective gear. Purchase of nonexpendable equipment (generally those items, of value greater than \$1000 with useful life greater than 1 year); see Paragraph 7.G for further information regarding purchase of equipment.
2. Government equipment inventory use at standard cost, such as boom, skimmers, transfer systems, pumping systems, dracones, vapor analyzers, gas indicators, protective gear.
3. Purchase of water as alternative drinking water.
4. Contract for temporary lodging for evacuees.
5. Contract for temporary feeding for evacuees.
6. Contract for cleanup labor.
7. Contract for diving, and when necessary to control the source or spread of oil, salvage operations.
8. Contract for disposal.
9. In special circumstances, contract for temporary docking of salvaged vessel.
10. Rental/purchase of fencing, barricades, and security material.
11. Traffic control.
12. Contract for capturing, cleaning and emergency care for oiled animals, such as costs to capture, clean, temporarily care for, and release birds oiled by spill, or dispose of dead animals.
13. Repair of damages caused by cleanup activities, such as damage to lawns by vehicles. [Note that such costs may also be the subject of a claim for property damage per standard NPFC claims procedures if not handled as part of the removal.]
14. Replacement of oiled equipment and property which cannot be cleaned cost-effectively.
15. Decontamination of oiled equipment.
16. Replacement of excavated soils.

CHAPTER 6 — PHASE IV – GOVERNMENTAL DOCUMENTATION AND COST RECOVERY – ACTIVITIES AND REMOVAL COSTS

- A. Phase IV Activities. These activities are the documentation and reporting activities necessary to support cost recovery and record uses of the OSLTF. The costs incurred in this phase are also eligible for funding from the OSLTF to the extent that they can be identified with and attributed to specific incidents.
- B. Examples of Phase IV Activities:
1. Collect and safeguard information, samples, and reports.
 2. Interview witnesses and investigate causes.
 3. Consolidate information and prepare reports.
 4. Transmit reports to appropriate officials.
 5. Verify report information.
 6. Bill RPs.
- C. Examples of Costs Eligible for Charge to the OSLTF for Phase IV Removal Activities:
1. Local and TDY travel and transportation.
 2. Reservists orders.
 3. Government personnel services.
 4. Government and leased facility use, such as office space.
 5. Lease/purchase computer systems.
 6. Government systems use at standard cost.
 7. Overnight/express delivery services.
 8. Warehousing/storage services, such as costs to store records, samples.
 9. Contract clerical services.
 10. Contract documentation services.
 11. Government or leased communications systems, such as paging systems, cellular phones, and facsimile equipment normally charged at standard rates plus any identifiable direct costs.

CHAPTER 7 — REMOVAL COST ISSUES AND SPECIFIC LIMITATIONS

- A. Removal Costs. As already discussed, generally, the removal costs incurred should be appropriate under the circumstances and costs incurred should generally be proportionate to the size of the spill. This chapter provides guidance on specific situations or types of removal costs.
- B. Substantial Threats of Discharge. The OSLTF may be used to respond to a substantial threat of a discharge to prevent, minimize, or mitigate oil pollution from such an incident. Each FOSC has the authority to determine whether particular situations present substantial threats of discharge.
1. In making a determination to respond to a substantial threat of discharge, the FOSC should consider the following factors in the context of the overall situation:
 - a. The likelihood of a discharge under the circumstances; that the situation presents an unacceptable probability that a discharge will occur without FOSC intervention.
 - b. The proximity to navigable waters, the quantity of oil which may be discharged, and the lack of barriers to stop the oil from flowing to the water indicate that a spill will impact navigable waters.
 - c. The flow path to surface waters (for land based discharges) as indicated by slope, soil permeability, water table, storm drains, curtain drains, natural or manufactured conduits, or the like.
 - d. The condition of or damage to the source, and the environmental factors or weather which may change the conditions, indicate that a spill will occur.
 - e. The potential impact of a discharge on the particular environment, including proximity to environmentally sensitive areas, populous areas, etc.
 - f. That action must be taken quickly to prevent a spill.
 2. As outlined in Chapters 1 and 2, the FOSC must document the factors considered and the basis for the decision that a specific situation presented a substantial threat of discharge.
- C. Groundwater Contamination. Removal costs may be incurred and paid from the OSLTF to handle oil discharges in groundwater where the FOSC has a reasonable basis to conclude that there is a clear hydrological nexus to surface waters and such nexus causes a discharge or poses a substantial threat of discharge to surface waters. The OSLTF is not available for removal actions to clean up groundwater when the groundwater does not discharge or pose a substantial threat to surface waters. Nor can the OSLTF be used to fund groundwater remediation activities after the discharge or the substantial threat of the discharge to surface waters has ended.

D. Multi-mission Activities.

The federal response may include search and rescue (SAR), law enforcement, safety of navigation, port safety or security, in addition to marine pollution response. In those situations, when resources are employed principally for their missions, their costs should not be charged to the OSLTF. Only those actions, whose primary purpose is removal, (i.e., the containment or removal of oil pollution or necessary to minimize or mitigate oil pollution damage to the public health and welfare) and which are consistent with the NCP, may be paid or reimbursed by the OSLTF. Removal cost must be incurred in the normal course of a removal effort under the FOSC's direction, following an FOSC's determination that there is an OPA incident requiring a response. In all multi-mission cases in which OSLTF funding is involved, FOSCs should document all costs while clearly identifying those relating to other mission activities and indicate why such costs should or should not be charged to the OSLTF.

The following operative purposes test should be applied: would the actions taken in the response have been required absent marine environmental protection requirements, such as 1) when the Coast Guard interdicts a Haitian vessel or seizes a vessel carrying drugs, the costs of controlling that vessel including any costs to prevent pollution from that vessel should not be charged to the OSLTF, or 2) when Coast Guard vessels enforce a safety zone around a grounded vessel in or near the entrance channel to a harbor area, the grounded vessel may pose a threat of pollution but the primary purpose of the safety zone and therefore the primary use of the resources enforcing it is for the safety of the traffic navigating around the grounded vessel into and out of the port.

E. Assessment Phase Costs.

See Chapter 4.

F. Use of Reservists. The OSLTF may be used to fund temporary active duty for Reservists related to a specific incident. The Reservists should be employed directly in the response unless otherwise authorized in advance by the NPFC.

G. Acquisition of Property Items.

1. FOSCs should only purchase property with OSLTF funds when operational necessity directly related to the removal dictates or when it is clearly more beneficial to the Government than leasing. When making decisions to buy versus lease property, and operational conditions permit, units should factor in the costs necessary to acquire, maintain, and dispose of the property, not just the purchase price versus the costs of leasing. Many of these considerations are appropriately addressed through the planning process before a spill occurs. Documentation of the factors considered in purchasing property during a spill are critical in cost recovery and litigation efforts and shall be documented to the greatest extent possible.
2. FOSCs should be aware that property purchased for removal activities will be billed to the RP at 100% of the cost. Accordingly, whenever feasible, the FOSC should provide the responsible party the opportunity to purchase or otherwise directly supply the property needed for removal activities. Upon case completion, any property purchased and provided by the responsible party shall be returned to the responsible party. Property purchased with the OSLTF, however, shall be disposed of in accordance with the procedures outlined below.

3. All property purchased must be accounted for in the cost documentation portion of the FOSC completion report.
4. For FOSCs, All “non-consumable” items, which includes any item or system having a cost of \$2,500 or items of high interest (such as radios, fax machines, cellular phones, computers, pagers, copiers, photographic equipment, protective clothing, meters, and similar items) regardless of cost require evidence of disposal action. FOSCs shall dispose of such items through the closest Defense Reutilization and Marketing Office (DRMO).
 - a. Document the transfer of each group of like items to the DRMO using form DD-1348 or other form acceptable to the specific DRMO. FOSCs should contact the DRMO prior to any transfer to determine specific requirements.
 - b. After the transfer, forward the original transfer document to the NPFC as part of the FOSC interim or final Completion Report. The FOSC should maintain a copy of the form for local records.
 - c. All lost, stolen, or damaged non-consumable property which is not available or suitable for transfer to the DRMO must be surveyed in accordance with agency property management guidelines and the Federal Property Management Regulations. Copies of approved survey reports shall be forwarded to the NPFC to provide the evidence of disposition.
 - d. All consumable items (items not classified as nonconsumable property) are considered expended during the removal activity and should be disposed of in the most cost-effective manner. Lots of unused consumable property with a cost of more than \$2,500, however, must be disposed of - and documented - in the same manner as non-consumable items.
 - e. If questions arise on whether a particular item is consumable or non-consumable, or on the reporting requirements, FOSCs should contact the cognizant NPFC case officer. Coast Guard FOSCs may contact Commandant (G-CFM-3) with questions concerning DRMO availability or procedures for disposal.
5. EPA FOSCs should refer to their agency guidance relating to proper purchase, accounting, and disposal of property. Copies of all documentation related to the property purchase and disposal should be provided with the incident documentation.
6. Items which meet requirements for capitalization may be charged to the OSLTF but the amount charged to the specific incident shall be based upon an appropriate standard cost or allocation of the acquisition cost to the useful life. FOSCs should identify such items separately in the documentation. The NPFC shall make appropriate adjustments to the incident specific costs. Any such items purchased with the OSLTF belongs to the OSLTF until properly disposed of as excess property.
7. Purchase of major property items (land, buildings, structures, etc.), or major pieces of equipment that will remain in use for long periods of time present special problems not only for disposition but in planning for maintenance and operation as well. FOSCs contemplating such acquisitions should contact the cognizant NPFC Regional Manager

prior to purchase to discuss available options and to ensure that proper financial planning and analysis is performed.

- H. Overflights. Aircraft overflights provide a valuable tool to the FOSC in assessing the extent and movement of the spilled oil and evaluating the progress of cleanup efforts. Such overflights, however, should be carefully scheduled to minimize avoidable charges. This could include the use of less expensive commercial aircraft when made available by the RP provided that Coast Guard policies governing the use of non-contract commercial aircraft are followed. Overflights primarily for VIP orientation, for example, should not be charged to the OSLTF.
- I. Replenishments of Inventory.
1. FOSCs routinely draw on existing inventory of response equipment for specific responses. The OSLTF may be used to return that equipment to inventory after the response in the same condition it was before the response. Inventory items used up in the response or damaged beyond economical repair may be replaced. The unit replacing inventory items must follow existing agency guidance regarding survey of lost or damaged property. Any survey should establish whether the damages were directly due to a specific response or otherwise due to manufacturer defect, improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.
 2. If the response equipment is replaced as a result of damage incurred during the response, the OSLTF will normally pay for the replacement. The OSLTF should not, however, be charged the standard rate for use of that particular item of equipment during the response.
- J. Use of Standard Costs. The OSLTF may be used for the cost of Federal resources used in oil spill response. The costs of Federal resources should be charged at standard costs or at direct cost plus a standard overhead or surcharge. (Equipment replaced due to damage as a result of the response or purchased using the OSLTF during the response should not be also charged at a standard rate.) The agency presenting costs based on standard rates or surcharges should be able to show that such rates are the official rates of that agency, i.e., published in agency directives or set by appropriate authority. The agency must certify to the NPFC that it followed practices consistent with generally accepted accounting practice, and OMB and GAO guidance in developing its standard costs.
- K. Spills from Federal Vessels or Facilities. While Title I of OPA excludes discharges from public vessels and federal facilities and there is no OPA liability for such public vessels and federal facilities, the NCP provides that a federal agency owning or operating the public vessel or federal facility is responsible for funding and handling the removal activities. If the federal agency cannot fund or handle the removal activities, the FOSC may access the OSLTF to fund the clean up or prevention of a discharge.
1. If the OSLTF is used to clean up a discharge from a public vessel or federal facility, the NPFC will seek reimbursement from the responsible agency. FOSCs should immediately notify the appropriate NPFC regional manager whenever it appears necessary to use the OSLTF for a federal spill. Additionally, if the Government takes custody of property prior to an OPA incident having been declared by the appropriate FOSC, the costs of handling the property and any oil associated with it are not chargeable to the OSLTF.

2. When the responsible agency is capable of funding the cleanup but lacks the resources to properly conduct the cleanup, the FOSC should attempt to establish a Military Interdepartmental Purchase Request (MIPR) or similar reimbursable agreement, as time permits, to establish direct upfront funding of the FOSC removal activities. FOSCs are encouraged to contact the cognizant NPFC Regional Manager for assistance in establishing such agreements.

L. Spills Involving Both Removal Costs and Potential Claims.

1. When an incident involves removal actions under the direction of the FOSC as well as potential damage claims under OPA, the actions of the FOSC should be coordinated with the NPFC case officer/claims representatives to ensure a cost-effective use of all OSLTF monies.
2. There are overlaps between removal costs and damages. For example, the cost incurred by the FOSC for cleaning boats oiled due to a spill is a valid removal cost while costs incurred by individuals for cleaning their own boats oiled due to a spill are also valid claims. Further, a boat owner may have a property damage claim for permanent damage to the boat even after the FOSC has cleaned it. In most cases, it is more efficient to handle boat cleaning as a removal cost because this ensures control over the disposition of the oil and the costs of the cleaning. Any property damage can be handled separately as a claim.
3. Additionally, there are situations where property is cleaned by the FOSC only to be replaced as the result of a claim. An example might be oiled wooden piers which although cleaned by the FOSC as removal must still be torn out and replaced due to the residual damage. Close coordination allows the selection of the most cost-effective approach which in some cases is to simply replace the property as a removal cost in the first place.

M. Mixed substance spills. The OSLTF may be used to fund removal activities for a discharge or substantial threat of a discharge of oil. An oil is any oil except those subject to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq. OPA oils include the following: (1) petroleum with naturally occurring CERCLA-listed hazardous substances; (2) petroleum to which additives have been added during the refining process; and (3) petroleum provided that hazardous substances have not been added during its use nor increased by its use. If a discharge consists of both an OPA oil and a CERCLA substance, its clean up cannot be funded from the OSLTF.

N. Mixed spills. If an incident includes a distinct discharge of an OPA oil and a distinct discharge of a CERCLA hazardous substance, the clean up of the discharge of oil may be funded from the OSLTF. The clean up of CERCLA hazardous substances must be funded from CERCLA's Superfund. For instance, a vessel carrying containers of hazardous substances sinks and discharges its diesel. The clean up of the diesel may be funded by the OSLTF; clean up of the hazardous substances would be funded by CERCLA's Superfund.

O. Research and Development (R&D) Activities. The OSLTF Emergency Fund is not available for R&D. The Emergency Fund is available for removal costs which may involve new or novel methods of cleanup (with untried and unproven methods being turned to only as a last resort), as long as the method is otherwise consistent with the NCP. R&D may incidentally

benefit from the fact that the FOSC finds it appropriate to use a new method or product to deal with a particular discharge or threat thereof. However, the fact that R&D may benefit from the use of new technology should not be a factor in the FOSC's normal decision process in ascertaining how a particular spill will be dealt with. The FOSC may permit R&D to be conducted on a "spill-of opportunity" if it does not otherwise interfere with the FOSC's removal effort, but the R&D must be underwritten with R&D funds.

P. Use of State and Local Response Resources. Section 300.135 of the NCP requires FOSCs to coordinate response efforts with appropriate state agencies. It adds, "State and local Governments, however, are not authorized to take actions under subparts D and E of the NCP that involve expenditures of the Oil Spill Liability Trust Fund or CERCLA funds unless an appropriate contract or cooperative agreement has been established." To carry out this requirement, the following applies to funding of state participation in oil spill response:

1. The FOSC should establish from the outset whether State resources are necessary for removal actions for an incident and info the State OSC. The FOSC should use incident action plans or similar planning and documentation tools to define the scope of expected State actions and allow the NPFC to make decisions on potential claims. To the extent possible, appropriate State roles should be described in Area Contingency Plans (ACP).
2. When a state responds to a spill, either as agreed in an Area Contingency Plan or by specific FOSC request, a Pollution Removal Funding Authorization (PRFA) should be executed to ensure they are reimbursed for specific work performed at the request of the FOSC. As part of the PRFA, the FOSC must attach a Statement of Work to describe the required removal actions. A generic Statement of Work provided in Appendix Two, of this TOPS may be used.
3. When the FOSC determines that State resources were not necessary for an effective response, then the OSLTF is generally not available to pay the State for its actions. There may be, however, some legitimate State costs incurred by the first Government representatives on scene which could be either funded directly through a PRFA or the subject of a claim.
4. These provisions only apply to those incidents to which the FOSC actually responds. If a State has properly coordinated a response with the predesignated FOSC and conducts oil spill removal actions consistent with the NCP, then the State is generally eligible for reimbursement of removal costs through the OPA claims process and corresponding claims regulations.

Q. Oil Wells/Pits/Facilities.

1. The OSLTF is available for removal of oil discharged, or substantial threat of discharge, from "abandoned" wells, pits, and related facilities. The use of the term "abandoned" in this context indicates that such wells are no longer in active production, but does not mean that they were properly abandoned in accordance with applicable state law. Generally, these facilities are "orphans" presenting special problems in identifying the responsible parties for the discharge or substantial threat.
2. The OSLTF may be used to fund discharges or substantial threats of discharges from facilities. A facility is any structure, group of structures, equipment or device used to explore for, drill for, produce, store, handle, transfer, process, or transport oil (except

vessels). It includes but is not limited to oil wells, wellheads, pits, pipelines, gathering lines, storage tanks, and tank batteries, pits, and containment areas.

3. Identification of Responsible Party. The FOSC should begin appropriate research, including title searches, tax records, and bills of sale, as early as possible to identify the responsible parties. This may require the hiring of appropriate services. The costs of such services may be charged to the FPN as removal costs. For advice and assistance, FOSCs should contact the appropriate NPFC Regional Manager or case officer. A generic list of necessary documents for an RP search is provided in Appendix One of this TOPS.

R. ESA Consultations.

1. During the removal action, if an emergency consultation under section 7 of the Endangered Species Act is required, it can be funded by the FPN as a removal cost. Please see The “Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act’s National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act” for details of the agreement and a sample Pollution Removal Funding Agreement and Statement of Work.

- S. Site Remediation. Discharges from storage tanks, oil wells or related facilities, and other similar facilities often may have caused extensive subsurface soil or groundwater contamination. Where such underground contamination has migrated so as to cause an actual surface discharge or substantial threat of discharge into navigable waters, the OSLTF may be used for removal. The OSLTF is available to remove oil pollution when it represents a substantial threat to U.S. surface waters, however, this does not extend to the remediation of contaminated soil or shorelines which no longer represent a substantial threat to U.S. surface waters. Once the necessary steps have been taken to eliminate the substantial threat of further discharge to the navigable water, further actions to permanently remedy the affects of an oil pollution incident, including long term treatment of underground contamination, are beyond the scope of OSLTF emergency removal funding.

APPENDIX ONE

DOCUMENTS FOR IDENTIFICATION OF OWNER/OPERATORS FOR

ONSHORE WELLS AND OTHER FACILITIES

The types of information required to establish the Responsible Party are described below. This information is derived from a generic statement of work that can be made available to the OSC should he/she decide to use contract resources.

Source of information may be found in the county office for recording deeds. The report should include documents covering the period 10 years prior to the drilling of the well or the construction of the facility, up until the present:

- 1) Identification of past and present owners of the surface interest, mineral interest, and leasehold interest including:
 - a. Narrative describing title search results;
 - b. The time periods during which the person or company owned the interest;
 - c. Provide complex title analysis narrative if necessary; and
 - d. Current addresses, phone numbers and corporate status of each present owner.
- 2) Legal descriptions for each parcel.
- 3) An ownership history table by parcel which details the owners of the surface interest, mineral interests, and leasehold interest of each parcel separately described for the site, with approximate percentages of interest.
- 4) One Plat map which includes the searched parcel or parcels.
- 5) A map included in the report with the property outlined and each parcel numbered. The map parcel number shall correlate with the ownership table. Site boundaries should also be shown on the map.

Copies of Title documents including titles, deeds, mineral deeds, liens, leases, assignments, agreements, title transfers, satisfied and unsatisfied mortgages including deeds of trust and releases of deeds of trust, easements and encumbrances. The contractor shall provide legible copies whenever possible. If legible copies are not available, a description of the information conveyed in the document should precede the document.

Any other documents relating to ownership of equipment, fixtures, and structures on the land.

Any permits issued by regulatory or licensing agencies (often not recorded in any property records, but is normally found with the applicable states regulatory agency).

**DOCUMENTS FOR IDENTIFICATION OF
RESPONSIBLE PARTIES FOR**

OFFSHORE WELLS AND OTHER FACILITIES

The types of information required to establish the responsible party are described below.

Source of information - State regulatory / leasing authority

Owner identification:

Identify the owners of the submerged surface and mineral owners as of the date of the Federal On-Scene Coordinator discovers the discharge or determines that the facility poses a substantial threat of a discharge of oil to navigable waters; AND

Identify current addresses, phone numbers and corporate status of each past and present lessee, permittee, and submerged surface and mineral owners. The addresses and phone numbers shall be verified and corrected by the contractor.

Provide copies of the following documents including:

- a) The lease under which the facility was last operated;
- b) The lease, covering the area where the facility is located, that is in effect on the date the Federal On-Scene Coordinator discovers the discharge or determines that the facility poses a substantial threat of a discharge of oil to navigable waters. A copy of this lease is required, whether or not the facility was ever operated under this lease.
- c) Copies of all assignments of any interest for all leases noted above;
- d) Copies of all releases of any interest for all leases noted above;
- e) Copies of all subleases of all leases noted above;
- f) Copy of permit (may be with state agency other than leasing agency); AND
- g) Copy of the plat should be attached if it is not already with the permit or lease.

APPENDIX TWO

PRFA

SAMPLE STATEMENT OF WORK FOR REMOVAL ACTIONS

The task list below addresses the specific removal actions that are ordered through PRFA's (Pollution Removal Funding Authorization) in support of FOSC's/OSC's. When modification or amendment to this PRFA is required, the "Amendment to Pollution Removal Funding Authorization" shall be used and a new task list shall be assigned if new tasking is identified.

The recipient agency of the PRFA shall perform the following (as identified by the appropriate check marks below):

- collect facts regarding the discharge of oil into navigable waters, to include its source and cause;
- identify potentially responsible parties (RP's);
- analyze the nature, amount, and location of discharged oil;
- analyze the probable direction and time of travel of discharged oil;
- identify pathways to human and environmental exposure;
- provide analysis of discharges posing a substantial threat to the public health or welfare of the United States;
- provide temporary/permanent stabilization prior to the mobilization of other responders;
- provide appropriate personnel, equipment, and supplies to contain and remove discharged oil from navigable waters and shoreline;
- document all site-specific costs incurred by the contractor and the recipient agency for the removal actions;
- identify active or historical facility processes or operations that may have contributed to the discharge of oil;
- prepare a sampling plan that describes the number, type, and location of samples and the type of analysis (for example, sampling and analysis plans for collection of multimedia environmental samples; petrochemical product or waste oil or crude oil);
- collect representative oil sample(s) and submit them to the U. S. Coast Guard Marine Safety Lab for appropriate analyses;
- develop site specific Health and Safety Plans (HSP's);
- review, prepare, and submit all required accounting/accounting records in accordance with the National Pollution Funds Center (NPFC) Instruction 16451, "Technical Operating Procedures for Resource Documentation under the Oil Pollution Act (OPA) of 1990";
- submit Pollution Reports (POLREPS) at periodic intervals as specified by the issuing FOSC/OSC;
- provide daily progress reports and/or consultations to the OSC/FOSC, as necessary;
- develop health and safety procedures for response activities, such as OSHA levels of protection associated with a site;
- recommend cleanup and disposal options;
- review completeness of disposal documentation, such as manifests, waste profile data, and other information;

- obtain permits from local, state or federal agencies, associated with the contractor's response activities;
- provide or arrange for site security to prevent unauthorized access of any persons or animals to preserve public safety, such as armed or unarmed security services;
- identify concerned local and elected officials;
- conduct deed and title searches as appropriate;
- conduct waste profile analysis;
- perform and advise on wildlife capture, recovery, and stabilization.